Time Warner Cable

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Via Federal Express

Mr. Sean M. Carroll
Hearing Officer
Commonwealth of Massachusetts
Department of Telecommunications & Cable
1000 Washington Street
Suite 820
Boston, MA 02118

Re: D.T.C. 13-10 Petition of Time Warner Cable for Review of FCC Forms 1240 and Form 1205 for the Great Barrington, North Adams, and Pittsfield Systems

Dear Mr. Carroll:

This will respond to your letter of August 8, 2014 seeking clarification regarding the responses to Record Requests 4 and 5 included in Time Warner Cable's responses of July 10, 2014 as well as seeking additional information regarding the Additional Outlet (A/O) Service Fee.

Response to Record Request 4

The Department has requested supplemental legal briefing in support of TWC's response to Record Request 4, made at the June 12, 2014 evidentiary hearing. Record Request 4 asked TWC to explain the unbundling of the equipment/navigator charges. TWC's response, as received by the Department on July 10, 2014, stated that:

> TWC currently unbundles (i.e., itemizes) its charges for a converter and its "navigator" charge on subscriber bills in accordance with Commission rules. Thus, a subscriber who leases an HD Set-top Box will see on his/her bill a charge for the HD Set Top box of \$6.98 (the OSR/MPR for the box as calculated on Form 1205) and a separate charge of \$3.27 for "The Guide" (i.e., the navigator). The navigator is not part of the regulated equipment because it is a service whose costs are not included in computing the Form 1205 equipment calculation; and it is not part of the regulated "basic service" rate because it is not a basic service provided to every subscriber.

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As indicated, TWC separately itemizes its charges for a converter and for the navigator service because it is required to do so by the Commission's rules. Earlier this year, the FCC's Media Bureau addressed the unbundling issue, upholding an LFA decision that required a cable operator that provided a service and the equipment used to access that service for a single fee to remove the equipment costs from the fee.[1] As the Bureau explained, the long-standing requirement that cable operators establish cost-based equipment rates separate from the rates for the services accessed through the use of such equipment remains in effect for rate-regulated cable systems.[2] The Bureau added that "Section 629(a) of the Cable Act allows equipment for accessing multichannel video programming <u>and other services</u> offered over the system 'if the system operator's charges to consumers for such devices and equipment are separately stated and not subsidized by the charges for any such service.'"[3]

Unlike the operator in the case cited above, TWC has not established a single charge that covers both a piece of equipment and a service provided via that piece of equipment. Nor is there any doubt that the navigator is a service separate from the converter used to access it. The inherent functions of TWC's converter include the ability to receive and tune different channels, volume control, and remote control capability. The navigator, which an advanced program guide service provided via the converter (just as on-demand programming is an advanced video service provided via a VOD-enabled device) is not an inherent part of the converters functions. (Put another way: it is possible for a customer to use a converter without a navigator service, but it is not possible for a customer to use the navigator service without a converter). As such, TWC not only is permitted to separate the charges for the converter and the navigator service, it is required to do so. Furthermore, because the navigator service is optional for basic tier customers, it is (like other non-basic tier services accessed through a "basic" converter) not a basic tier service. Thus, while TWC is required to separately state the price for the navigator, that price is not subject to regulation.[4]

<u>Response to Record Request 5</u>

In prior years, various finance groups at TWC's legacy division level would prepare separate 1205 forms for their respective areas and submit them to the corporate-level finance group. Upon receipt, the corporate-level finance group consolidated the data from the divisional 1205 forms to create an aggregated companywide FCC Form 1205 as permitted by the FCC's rules. The aggregate companywide Form 1205 was then redistributed to the regional offices to be filed with each area's regulated local franchising authorities.

In 2013, as part of a corporate reorganization, TWC modified the way in created its companywide Form 1205. Instead of summing a series of Form 1205s created at the divisional level, TWC established a corporate level Regulatory Reporting group that is now responsible for

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[1] *Comcast Cable Communications, LLC*, Order, DA 14-364 (MB, March 19, 2014). For example, the operator in the case reviewed by the Media Bureau listed among its rates an "HD Technology Fee" that included the cost of an HD converter as well as certain service components provided via that converter.

[2] *Id.* at para. 14.

[3] *Id.* (emphasis supplied).

[4] *Id.* at para. 15 (reiterating that non-basic services are not subject to regulation even if the equipment used to receive them also is used to receive basic services).

preparing a companywide FCC Form 1205 filing to calculate the MPRs for equipment and installation in regulated areas.

The FCC Form 1205 calculation is based on financial data related to the costs associated with regulated equipment and installation for the video basic service tier (BST). These costs include the actual cost of the customer premises equipment (CPE) and expenses incurred, as well as the cost of the equipment and plant necessary for the installation and maintenance of CPE. The Form 1205 consists of several schedules and worksheets, described below along with a description of the methodology TWC's Regulatory Reporting group used in completing the form.

Schedule A *– Capital Costs of Service Installation and Maintenance of Equipment and Plant*

- This schedule is used to compute the annual capital costs of the equipment and plant necessary for installation and maintenance of customer equipment used to receive the company's residential video services. All of the Company's tangible assets were included in Schedule A, with the exception of those related to News (including the Lakers RSN) and Media Sales. The actual CPE assets were also excluded from this schedule as the capital costs of the customer equipment itself are calculated separately on Schedule C. The assets are categorized, per the FCC instructions, into the following categories: Vehicles, Tools, Maintenance Facilities, and all Other. The gross book value and the accumulated depreciation of the assets were obtained from TWC's general ledger fixed asset subsidiary ledger. Deferred taxes were calculated using tax net book value (NBV). All of these capital costs were then adjusted as follows in order to estimate the portion of capital costs related to CPE in regulated communities.
    - 15.20% - represents the 4 year weighted average of residential set-top box spending to total company capital expenditures
    - 11.66% - represents the weighted average of regulated subscribers to total subscribers

Per the FCC Form 1205 instructions, the resulting NBV was multiplied by the rate of return prescribed by the FCC (11.25%), grossed up for federal and state taxes, to arrive at the return on investment (ROI) of the assets. The current year's depreciation expense was added to the ROI to arrive at the annual capital cost total of equipment and plant.

Schedule B *- Annual Operating Expenses for Services Installation and Maintenance Equipment*

This schedule collects total annual operating expenses for installation and maintenance of cable equipment. Some of the costs collected here include salaries, benefits and supplies. In a change from prior practice, TWC's P&L now reports segment managed expenses and centrally managed expenses. Direct costs (content produced, content purchased, etc.), as well as expenses related to News and Media, were excluded from this calculation. The expenses were allocated as follows:

- ***Segment Managed Expenses***
  - Residential business segment expenses for each of the regulated multiplied by 18.80% (4 year weighted average of residential set-top box spending to total residential capital expenditures)
  - Result multiplied by percentage of regulated subscribers specific to each regulated area:
    - Hawaii = 100% regulated
    - Midwest = 5.97% regulated
    - East = 17.21% regulated

- ***Centrally Managed Expenses***
  - All centrally managed expenses x 15.20% (4 year weighted average of residential set-top box spending to total company capital expenditures)
  - Result multiplied by 11.66% (weighted average of regulated subscribers to total subscribers)

***Schedule C** - Capital Costs of Leased Customer Equipment*

This schedule computes the annual capital costs for each model or category of customer equipment that is offered in connection with regulated service using the same basic methodology applied in Schedule A. As this schedule focuses specifically on CPE related equipment, only the amounts for residential video CPE were pulled and then adjusted based on the market specific regulated subscriber percentages.

Schedule C also requires total maintenance/service hours related to each category of CPE to be reported. This was calculated as follows:

- Number of connects for each type of CPE multiplied by the average amount of time spent readying the equipment for installation plus disconnects multiplied by the average amount of time spent prepping the equipment for redeployment.
- Service Hours also includes an adjustment to the disconnects count of 20%. This accounts for "fall out/fail", meaning some boxes are not worth the effort to clean and screen and therefore no time is spent reconditioning them.
- DTAs require no prep time before being sent out to our customers; however, approximately 26% of the time, our customers are unable to activate the DTA per the instructions included in the mailing. Therefore, the customer must contact a customer service representative for assistance with activation of their DTA.
  - The average time spent on the phone with a customer service rep is 10 minutes.
  - Additionally, only 10% of DTAs are currently being redeployed, so only 10% of the DTA disconnects number has been included in the calculation of the DTA redeployment times.

***Schedule D** – Average Hours per Installation*

This schedule is used to calculate costs of specific equipment and installations to derive the maximum rates that may be charged for regulated equipment and installations. In it, the average amount of time to perform specific types of installations is reported. The time to complete certain activities was determined based on the cap standards surveys maintained by the Company. It is important to note that the cap standards process is reviewed annually by a TWC internal control group as well as audited by the Company's external auditors.

Installation Type	**Time in hrs**	
Average Hours per Unwired Home Installation	1.0400	Includes time for meet and greet, drive and installation.
Average Hours per Pre-Wired Home Installation	0.8300	Includes time for meet and greet, drive and installation.
Average Hours per Additional Connection Installation at Time of Initial Installation	0.3308	Includes time for installation and wallfish.
Average Hours per Additional Connection Installation Requiring Separate Installation	0.8308	Includes time for meet and greet, drive, installation and wallfish.

Worksheet for Calculating Permitted Equipment and Installation Charges

Step A: Hourly Service Charge

An hourly service charge (HSC) is calculated as follows:

- Total capital costs of installation and equipment calculated on schedule A
- Plus total annual operating expenses for installation and maintenance calculated on schedule B.
- Result is then divided by the total labor hours for maintenance and installation of customer equipment which is calculated as follows:
  - Number of TWC installers multiplied by the average number of annual hours worked (pulled from data provided by payroll used in the calculation of the company's cap standards).
  - Result multiplied by 11.66% to get the number of regulated maintenance hours
  - Result multiplied by 48% (residential video revenue to total revenue) to determine the hours spent on residential video work.
  - Estimated contractor hours were also added based on the percentage of installs completed by contractors by market (collected as part of the cap standards survey process) supplied by the Fixed Asset Consolidation Team.

Steps B through F: Calculated Rates

These steps are completed using the information from Step A and the Schedules to calculate maximum permitted rates for installations, leased remotes and leased converter boxes as well as to indicate the rate that TWC charges for changing service tiers and equipment (typically a presumptively flat rate of $2.00) as follows:

	2012	2013
Hourly Service Rate	$ 59.15	$ 97.90
Installation Rates		
Installation of Unwired Homes	$ 70.58	$ 101.82
Installation of Prewired Homes	$ 54.10	$ 81.26
Installation of Additional Connections at Time of Initial Installation	$ 26.21	$ 32.38
Installation of Additional Connections Requiring Separate Install	$ 41.97	$ 81.34
Equipment Rates		
Remote Control	$ 0.36	$ 0.33
Converter Box Type 1: Non-Addressable	$ 0.24	$ -
Converter Box Type 2: Addressable	$ 5.84	$ 6.98
Converter Box Type 3: DTA	$ 1.51	$ 2.11
Other Equipment (Cable Card)	$ 2.52	$ 3.49
Charge for Changing Tier	$ 2.00	$ 2.00

The increases in TWC's installation and equipment rates for for 2013 compared to 2012 are primarily the result of increases in the hourly service computation. The increase in the hourly service charge is attributable for the most part to increases in the costs elements that go in to that calculation. In particular, over the course of the past 22 years, changes in the way TWC records certain relevant costs that previously had been recorded at a divisional level (and thus would have been included in the aggregated Form 1205 created out of the divisional forms) resulted in those costs being recorded at the corporate level; under the decentralized process of consolidating divisional level forms, these costs would not have been picked up in the hourly service charge calculation. For example, in recent years the process of consolidating divisional forms previously used to create the companywide aggregate form no longer picked up certain costs pertaining to residential CPE that were originally maintained at the divisional level but were subsequently migrated to, and recorded by, TWCs corporate level advanced technology implemented function. The 2013 Form 1205 once again includes such costs.

In conclusion:

- The information used in the preparation of TWC's 2013 Form 1205 was pulled from the Company's general ledger and subsidiary records maintained in accordance with GAAP.
- Because all of the Company's accounts are not maintained in accordance with the FCC rules related to Form 1205, the use of estimates is permitted in calculating equipment and installation costs.
- The estimates used in the preparation of Form 1205 are both reasonable and repeatable.
- Per the FCC instructions related to Form 1205, when cost data is not available at the franchise area level, costs at the Company level may be used as long as they can be "adjusted" to reflect franchise level information.

Additional Outlet A/O Service Fee

Time Warner Cable is still researching information in order to respond to this additional request for information. We hope to be able to provide the response shortly.

Sincerely,

John E. Fogarty

JEF/srh

cc: Kalun Lee, Acting General Counsel, DTC
Karlen Reed, Director, Competition Division, DTC
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